Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Review of Quiet Zone Application Procedures	)	WT Docket No. 01-319

To: The Commission

REPLY COMMENTS

The National Radio Astronomy Observatory, Green Bank, West Virginia (NRAO), by and through its attorneys, hereby submits its reply comments in response to the comments filed by RCC Consultants, Inc., Cingular Wireless LLC and Spanish Broadcasting System, Inc.

1. At the outset, it is important to understand what are the issues in this rule making proceeding and what are not. Commission's Notice of Proposed Rulemaking (NPRM) explicitly recognizes that the Quiet Zone rules work well and that it is not looking to invalidate them:

> We consider protection of the Quiet Zone areas from radiofrequency interference to be critically important, as reflected in our existing rules and policies. It is our understanding that the current coordination procedures generally are successful in achieving this goal. We emphasize that, in instituting this Notice of Proposed Rulemaking, we are not proposing to reduce or eliminate carrier requirements to coordinate with Quiet Zones. Rather, we are looking for ways to streamline our application processes so long as the underlying objectives of the Quiet Zone rules are not compromised.

NPRM at ¶5. This affirmation appears to have been overlooked by some commenters and their assertions in large measure go well beyond the scope of this proceeding.

2. A prime example of this oversight is found in the comments submitted by RCC Consultants, Inc. (RCC). Their comments appear to be born out of frustration arising from an earlier experience in which their attempts to circumvent the FCC rules pertaining to the National Radio Quiet Zone (NRQZ) on behalf of the Augusta County, Virginia government met with singular failure. In this proceeding, as in the Augusta County proceeding, RCC urges that the reasonableness of the interference protection criteria employed by NRAO is immunized from public scrutiny and is nowhere found in the FCC's Quiet Zone rules. Here, as there, RCC complains that the FCC Quiet Zone rules should establish "[a] clear process for performing interference studies" and "a clear process for appeals of interference objections" suggesting that previous coordination with NRAO has been "a trial and error process" and "subject to error." RCC Comments at p. 1. Similarly, Spanish Broadcasting System, Inc. (SBS) would have the Commission "establish clear field strength limits for all Quiet Zone locations" and in those cases where an applicant certifies that its application is less than the limit or establishes that terrain shielding or other propagation anomaly brings its otherwise non-complying application within the established limits, an applicant would be permitted to certify to its compliance and no Quiet Zone entity coordination or consent would be necessary. SBS Comments at ¶¶6-7.

3. The simple answer is that the protection criteria already exist and have been employed for decades and have been applied uniformly to all NRQZ applicants in order to preserve the low radio noise level necessary to conduct ultra-sensitive radio astronomy observations. The criteria are consistent with protection standards employed to protect radio astronomy frequencies and their reasonableness has been tested by time and found to be accurate and reliable. The only known change in parameters occurred when the new $75 million, 100-meter diameter Robert C. Byrd Green Bank Telescope (GBT) was constructed in 1999. At that time the reference point for interference calculations was changed to the GBT from the 140-foot telescope because it is no longer used and because observations are now being conducted with the GBT. The criteria are not secret but rather have always been made available to applicants seeking coordination with NRAO and can be found on NRAO's website at http://www.gb.nrao.edu/nrqz.html. Any applicant which disagrees with the results of NRAO's analysis of potential interference can ask the FCC to resolve the dispute and is free to offer, in the context of a particular application proposing specific technical parameters, reasons why the NRAO's protection criteria are erroneous or otherwise unreasonable or inapplicable.

4. The balance of RCC's comments address what they characterize as "a de facto unfunded Federal mandate" which imposes additional and unreimbursed financial burdens on local governments and non-profit agencies in order to provide protection to the Quiet Zone. RCC Comments at p. 2. RCC's request for compensation from the federal government "for the costs associated with complying with the NRQZ requirements" is a matter to be addressed to a forum other than the FCC.

5. Both SBS and Cingular Wireless LLC (Cingular) address in a different manner the Commission's question of whether to allow Part 101 applicants to initiate conditional operation under Section 101.31(b) provided written consent is first obtained from the affected Quiet Zone entity and are otherwise eligible to initiate conditional operations. NPRM at ¶ 8. SBS, the licensee of radio broadcast stations in Puerto Rico and elsewhere, urges adoption of this proposal and would extend this expedited processing, but apparently not the conditional operation, to broadcast media, and submits that no Quiet Zone entity consent be required if an application proposes modification of an existing operating facility "which is technically equivalent to an existing facility." SBS Comments at ¶2. Cingular specifically urges expedited consideration of microwave applications under the circumstances posed by the Commission, Cingular Comments at pp. 3-4, and would extend expedited processing to all services in which advance Quiet Zone entity consent is obtained. Cingular Comments at p. 5.

6. At the outset, it is important to note the NRAO "consent" will not be provided except on or after an application has been filed and within the 20- day period provided in the Quiet Zone rules. Advance coordination, which Cingular urges the Commission to specifically encourage by way of clarification of the Quiet Zone rules, is and always has been available to any applicant. Indeed, advance coordination occurs regularly. However, it is NRAO's experience that facility designs change in the period between advance notification and the filing of an application. RCC's Augusta County, Virginia proceeding is a case in point. The advantages of advance coordination are that an applicant can address interference problems in advance of filing and design a facility that provides the requisite protection to the Quiet Zone. The NRAO's written consent, provided after an application has been filed, ensures that no changes have occurred since advance coordination (if any), which might result in objectionable interference. It has been NRAO's practice to provide such written consents on a timely basis, in most cases well before the expiration of the 20-day period.

7. NRAO opposes SBS's proposal to eliminate Quiet Zone entity consent in cases where modification of operating facilities results in a "technically equivalent"

facility. SBS Comments at ¶¶2, 9. Apart from being beyond the scope of the NPRM, such a change would deprive the NRAO and other Quiet Zone entities of conducting analyses in advance of what could be harmful operations. Technical equivalence or not, it is within the purview of the Quiet Zone entities to evaluate potential interference. The good faith of an applicant is not the issue; the issue is how best to ensure that protection of unique radio astronomy facilities, which is the underlying objective of the Quiet Zone rules, is maintained and not compromised. For the same reasons, SBS's suggestion to revamp the Quiet Zone rules to make compliance "more in line with the Commission's self-certification philosophy and the current realities of its electronic filing process" should not be adopted.

8. Both Cingular and SBS propose that the 20-day period for Quiet Zone entity comment be reconstituted as a "30-day coordination period" and that if no objection is raised by the Quiet Zone entity within that time period, then consent would be presumed. Cingular Comments at pp. 6-7; SBS Comments at ¶4. NRAO is strongly opposed to any presumption of consent by virtue of the failure to file an objection, either during advance coordination or within the 20-day post-filing date period. As we have already pointed out, NRAO has a history of willingness to coordinate in advance with Quiet Zone applicants. Such coordination can take a matter of days, or in the case of RCC's Augusta County, Virginia proceeding, more than a year. If the purpose of the coordination is to facilitate the design of a communications facility that serves a public need and interest while at the same time protecting radio astronomy research, then a 30-day cap undercuts the public interest in those cases that require more sophisticated design. In such instances, the NRAO would be forced to somehow notify the FCC of objections to an application, which has not yet been submitted. If the gist of the suggestions of SBS and Cingular is to extend the 20-day post-filing period within which to object, they have failed to make a case that the NRAO is responsible for any delay. Moreover, there is danger in instituting a presumption of Quiet Zone entity concurrence because, given NRAO's experience, the failure to timely consent or object would be due to a potential interference problem encountered by NRAO in its analysis, to the loss of such application or to the inadvertent failure of the applicant to notify the NRAO. NRAO is aware of no instance where it has failed to submit either a written consent or a written objection. If there is to be any default, it should be that no response from a Quiet Zone entity means "no consent."

9. Similarly, as an adjunct of their proposal to impose a 30-day limit on coordination, both SBS and Cingular assert that there be a time within which an application must be filed with the Commission after consent, explicit or implied, has been given or presumed. SBS would require a 60-day limit, SBS Comments at ¶4, whereas Cingular suggests six months. Cingular Comments at p. 7. Although there is merit in imposing some deadline to avoid staleness if the Quiet Zone rules are otherwise revised, NRAO does not believe that the current rules are broken. All applicants are free to coordinate with NRAO in advance of the filing of their applications and NRAO willing cooperates with all applicants. NRAO has consistently provided its written consent, or its written objections, within the existing 20-day post-filing period. Wholesale revision and tinkering with rules that have worked well for almost half a century is simply not necessary or appropriate.

10. Finally, Cingular makes one point in passing that merits comment. Cingular states at p. 3 of its Comments that although other services such as broadband Personal Communications Service and cellular radiotelephone service "do not require a filing for each and every facility" and therefore the processing delays they experience are "less of a concern", the Commission is nevertheless urged to apply the changes it proposes in the balance of its filing to those other services. NRAO would be remiss if it failed to point out that it has experienced problems with these services as well as with other geographical

licensing services. It is NRAO's experience that if these services are conducting Quiet Zone interference analyses at all, then they are flawed. It has been simply a matter of hit or miss to discover potential interference problems for communications facility operators who are not required to file an application. While it may not be appropriate to undertake review of Quiet Zone rules insofar as geographic licensing is concerned, NRAO's experience is instructive in that the manner and extent of "streamlining" proposed by SBS, Cingular and RCC can adversely impact the effectiveness of the Quiet Zone rules. For the foregoing reasons, NRAO urges the Commission to limit the "streamlining" of its processing rules to permit expedited or otherwise continued processing of applications as to which the post-filing 20-day consent of a Quiet Zone entity has been obtained. NRAO has no objection to advance coordination by any applicant but it's experience has been that its review of applications as they have been filed has sometimes revealed significant discrepancies from what had been previously agreed to in the coordination process. Nothing has been shown to establish that delays in processing are due to delayed provision of NRAO's consent.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of February, 2002, copies of the foregoing "Reply Comments" were deposited with the U.S. Postal Service, first class postage prepaid, and addressed to the following*:

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* RCC Consultants, Inc. provided no name or address in its Comments and no copy of NRAO's Reply Comments could therefore be served on it.